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EXAMINER

EBERSMAN, BRUCE I

ART UNIT

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3691

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DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|---|--|
| Office Action Summary | Application No. 10/799,205 | Applicant(s) WAE LBROECK ET AL. | |
| | Examiner BRUCE I. EBERSMAN | Art Unit 3691 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/7/08</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1-23 presented for examination . Applicant filed an amendment on 4/15/08 amending claims 1,2,14-17,20 and 22. In light of the applicant's amendments, the Examiner withdraws the grounds of rejection of claims 1-22. New grounds are rejection instant office action are established for the amended claims 1,2,14-17, 20-22. Since the new grounds of rejection were necessitated by the applicant's amendment, the rejection of claims 1-22 is a final rejection of the claims.

Response to Arguments

1. Applicant's arguments with respect to claims 1-23 have been considered but are moot in view of the new ground(s) of rejection.
2. The examiner withdraws the rejection of claims 15-17 under 35 USC 112 2nd in view of applicant's amendments to the respective claims.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,2,4,5,12 rejected under 35 U.S.C. 103(a) as being unpatentable over Patent Publication 2003/0004859 to Shaw in view of US Patent 7162447 to Cushing

As per claim 1;

Shaw discloses; electronically receiving market data including prices for a security;
(00181) electronically receiving a first order regarding said security from a first user,
(0076) wherein said first order comprises a first price limit and a first quantity limit;
electronically storing said first order in a computer readable medium; (00181)
electronically receiving a second order regarding said security from a second user,
wherein said second order is contra to said first order and comprises a second price
limit and a second quantity limit; (0076 and 00181)
electronically storing said second order in a computer readable medium; (00181)

Shaw does not explicitly disclose reference price methodology and does not disclose
calculating a reference price for said security based at least partially on said market
data; electronically storing said reference price in a computer readable medium;
and executing a trade comprising said first order and said second order at a trade
execution price wherein said trade execution price complies with said first price limit
and said second price limit, and wherein said trade execution price is calculated to
minimize a difference between said reference price and said trade execution price

Cushing teaches; calculating a reference price for said security based at least partially
on said market data; (col. 9, lines 55-65)
electronically storing said reference price in a computer readable medium; (col. 10,
lines 1-15, calculated on software in a computer)

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and executing a trade comprising said first order and said second order at a trade execution price wherein said trade execution price complies with said first price limit and said second price limit, and wherein said trade execution price is calculated to minimize a difference between said reference price and said trade execution price

(col. 5, lines 30-40, orders can be stated in terms of the current market, further, in col. 10, lines 48-65, modifications can be made to produce results with a range which is constrained or determined in part by the market.

It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to combine the electronic trading system of Shaw with the reference stock price and market fulfillment teachings of Cushing for the motivation of creating a fair and ungained order execution market which is less prone to manipulation. (col. 2, lines 2—40)

As per claim 2, Shaw discloses;

A method as in claim 1, further comprising: transmitting an electronic notification to said first user if (0016,0021)

and wherein said notification notifies said first user that a contra order has been placed in said system. (00181),

Shaw does not explicitly disclose;

(notification where) (b) if said first order comprises a sell order and said first price limit is less than or equal to said reference price, or if said first order comprises a buy order and said first price limit is greater than or equal to said limit price;

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Cushing teaches;

(notification where) (b) if said first order comprises a sell order and said first price limit is less than or equal to said reference price, or if said first order comprises a buy order and said first price limit is greater than or equal to said limit price; (col. 11, lines 20-50,

traders are notified, provided feedback if trades do not occur which would allow them to change their bid or opt for their orders to be completed outside of the batch auction)

It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to combine the trading disclosure of Shaw with feedback teachings of Cushing which would provide feedback to a bidder who's price did not allow for a fill for the motivation of improving price setting in financial markets. (col. 2, lines 40-45)

As per claim 4, Shaw does not explicitly disclose a reference price based on recent market prices. Cushing teaches;

calculating a reference price for said security based at least partially on said market data; (col. 9, lines 55-65) . It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to combine the trading disclosures of Shaw with the reference price teachings of Cushing for the motivation of improving price setting in financial markets. (col. 2, lines 40-45)

As per claim 5, Shaw discloses screen displays to disclose relevant information but does not explicitly disclose the display of market price. (0183). Cushing teaches

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reference price as important to the transaction system. (col. 9, lines 55-65). It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to combine the display disclosures of Shaw with the reference price teachings of Cushing for the motivation providing relevant data for efficient transaction in financial markets. (col. 2, lines 40-45)

As per claim 12, Shaw (0048) discloses notifying a party when a nearly matching order is in the system so that the parties can contact each other and consummate a transaction.

Claims 6-11 rejected under 35 U.S.C. 103(a) as being unpatentable over Patent Publication 2003/0004859 to Shaw further in view of Cushing and further in view US Patent Publication 2003/0093343 to Huttenlocher.

As per claim 6, Shaw (0004) discloses block trades. Shaw and Cushing do not explicitly disclose notification when the 2nd order is at least as aggressive as the passive end of said block range. Huttenlocher (0033-36) teaches investor specificity as to levels of aggressiveness in regards to showing his/her order, whereby the investor can specify the block range that would implicitly be calculated to determine if the investor specified aggressive stances are met. It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to combine the confidential block trading disclosures of Shaw with the investor specified aggressiveness teachings of Huttenlocher for the purpose of creating a confidential trading system that would allow security block sales to be negotiated when the buyer and seller prices are within a reasonable variance.

As per claim 7, Shaw discloses block trading but, does not explicitly disclose calculating a block range based on recent volatility in a security. Cushing (col. 9, lines 40-45) disclose the use of recent market volatility in the calculation of pricing block trades. It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to combine the trading disclosures of Shaw with the market volatility teachings of Cushing for the motivation of improving price setting in financial markets. (col. 2, lines 40-45)

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As per claim 8, Shaw does not explicitly disclose predictive price ranges. Cushing teaches that in certain cases, the price range can be determined based on recent market activity, (col. 10, lines 5-20) which serves as a reference for block pricing. It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to combine the trading disclosures of Shaw with the predictive pricing of Cushing for the motivation of improving price setting in financial markets. (col. 2, lines 40-45)

As per claim 9 Shaw teaches block trading but, does not explicitly disclose block price ranges recalculated at intervals within a predetermined time period. Cushing teaches pricing based on recent market activity as a basis of influencing trade prediction. (col. 10, lines 5-20). It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to combine the block trading disclosures of Shaw with the predictive pricing of Cushing for the motivation of improving price setting in financial markets. (col. 2, lines 40-45)

As per claim 10, Shaw does not explicitly specifically disclose current or recent market prices, though it's implied that a trading market would trade at recent or current prices. Cushing teaches the user of market price to influence the transaction price of trades which include block type trades. (col. 10, lines 5-10). It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to combine Shaw's block trading disclosure with Cushing's teachings of market price transactions for the motivation of improving price setting in financial markets. (col. 2, lines 40-45)

As per claim 11, Shaw (0028) discloses prospective entries where the user can anonymously indicate an interest in a security with buy/sell but, does not specifically disclose notification based on pricing and aggression to price. Cushing teaches pricing based on market (col. 10, lines 5-20). It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to combine the notification of active interest principles of Shaw with the market pricing teachings of Cushing for the motivation of improving price setting in financial markets. (col. 2, lines 40-45)

Shaw and Cushing do not teach notification based on ranges of aggressiveness of an order. Huttenlocher (0033-6) teaches levels of aggressiveness for the purpose of disclosing orders. It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to combine the anonymous indication disclosure of Shaw with the market pricing teachings of Lupine and the market aggression teachings of Huttenlocher for the purpose of notifying other trading participants when a aggressively price order is pending in the system without disclosing the specific party and position.

Claims 3, 13 rejected under 35 U.S.C. 103(a) as being unpatentable over Patent Publication 2003/0004859 to Shaw in view of Cushing further in view of Official notice.

As per claims 3, 13, Shaw (claims 51 and 52) disclose time limitations to allow for further negotiation. Shaw and Cushing do not specifically disclose a time where upon the bidder is prevented from increasing price aggression (ie. bidding again). Examiner

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takes official notice that since the invention of Shaw requires buyer and seller interaction once a match is made, it would be obvious to one of ordinary skill in the art at the time of the invention that it would not be possible or desirable for bidders to be able to constantly re-bid during a minimum time period when the buyer and seller are reviewing the orders and the computer is performing a matching function. Thus, orders would need to be frozen for a period of time. It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to combine the time limitations disclosed in Shaw with the examiner noticed teachings of built in delay or holds for orders for the purpose allowing the computer system to match available bids and for review of such bids prior to them being changed.

Claims 14, rejected under 35 U.S.C. 103(a) as being unpatentable over Patent Publication 2003/0004859 to Shaw in view of US Patent 7162447 to Cushing

As per claim 14;

Shaw discloses;

orders in a security, ie price or time limits. (0042)

electronically receiving market data including prices for a security; (00181)

electronically receiving a first order regarding said security from a first user, (0076)

wherein said first order comprises a first price limit and a first quantity limit;

electronically storing said first order in a computer readable medium; (00181)

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electronically receiving a second order regarding said security from a second user, wherein said second order is contra to said first order and comprises a second price limit and a second quantity limit; (0076 and 00181)

electronically storing said second order in a computer readable medium; (00181)

Shaw does not specifically disclose reference price methodology, accumulation periods executing a trade comprising said first order and said second order at a trade execution price wherein said trade execution price complies with said first price limit and said second price limit, and wherein said trade execution price is calculated to minimize a difference between said reference price and said trade execution price .

Cushing (col. 3, line 40) teaches a accumulation and execution periods for the purpose of setting a time where orders can be accumulated for execution in an organized fashion.

and executing a trade comprising said first order and said second order at a trade execution price wherein said trade execution price complies with said first price limit and said second price limit, and wherein said trade execution price is calculated to minimize a difference between said reference price and said trade execution price

(col. 5, lines 30-40, orders can be stated in terms of the current market, further, in col. 10, lines 48-65, modifications can be made to produce results with a range which is constrained or determined in part by the market.

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It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to combine the electronic trading system of Shaw with the reference stock price and market fulfillment teachings of Cushing for the motivation of creating a fair and efficient execution market which is less prone to manipulation. (col. 2, lines 20-40)

As per claim 15, Shaw discloses electronically issuing one or more notifications (0181) but, does not specifically disclose; notification for orders to be entered in a given security. Cushing teaches an order acceptance period (col. 4, lines 45-47) in order to accept orders for trading. It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to combine the notification of Shaw with the acceptance period of Cushing for the motivation of conducting efficient transactions of a security. (col. 2, lines 40-45)

As per claim 16, Shaw does not explicitly disclose regular intervals of notification. Cushing teaches predetermined times (col. 3, lines 50-55 for conducting trading. . It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to combine the notification of Shaw with the acceptance period of Cushing for the motivation of conducting efficient transactions of a security. (col. 2, lines 40-45)

As per claim 17, Shaw discloses a system which brings counterparties together to trade confidentially. (0045). Shaw does not disclose wherein said notifications are issued at

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regular intervals of time in securities for which activity indicates block interest both to buy and sell said security.

Shaw (0004-5) discloses regular call times and block trading when interest exists.

As per claim 18, Shaw (0005) discloses regular call times to both buy and sell securities.

As per claim 19, Shaw (0004-5) discloses receipt of orders to buy and sell securities including reference to large blocks.

Claims 20-23 rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Application Publication 20030093343 to Huttenlocher in view of US Patent 7162447 to Cushing

As per claim 20, Huttenlocher discloses a financial information exchange server (fig 14), transactional databases (fig 14), and utilizes the market as a reference to pricing conducted. (0005, and 0105 check market as a reference), exchange networks and communication networks, (fig. 14 and 0005), and said communication is in contact with terminals (fig.15 trading display implies terminal). Huttenlocher further discloses referring to market price and execution to provide improvement. Huttenlocher does not explicitly disclose calculating a reference price,
execute a trade for a first order for a security and a second order for said security at a trade execution price,

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wherein said trade execution price complies with a first price limit of said first order and a second price limit of said second order, and wherein said trade execution price is calculated to minimize a difference between said trade execution price and a reference price for said security.

Cushing teaches; calculating a reference price for said security based at least partially on said market data; (col. 9, lines 55-65) execute a trade for a first order for a security and a second order for said security at a trade execution price,

wherein said trade execution price complies with a first price limit of said first order and a second price limit of said second order, and wherein said trade execution price is calculated to minimize a difference between said trade execution price and a reference price for said security. (col. 5, lines 30-40, orders can be stated in terms of the current market, further, in col. 10, lines 48-65, modifications can be made to produce results with a range which is constrained or determined in part by the market.

It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to combine the electronic trading system of Huttenlocher with the reference stock price and market fulfillment teachings of Cushing for the motivation of creating a fair and efficient execution market which is less prone to manipulation. (col. 2, lines 20-40)

As per claim 21, Huttenlocher (0033) discloses the ability to specify price aggression, 005 and compare to a reference price, (0105) which in this case is the actual market.

As per claim 22, Huttenlocher (0105) discloses that the first user is notified when a contra order has been received by said trade computer if the first order is at least greater (as aggressive) than the market price. (ie, the transaction will be consummated and the seller notified). Huttenlocher further discloses the capability to notify a party when there is an opportunity to improve an offer with an invisible party which is offering a better price. (0117-118). Huttenlocher does not explicitly disclose reference pricing Cushing teaches; calculating a reference price for said security based at least partially on said market data; (col. 9, lines 55-65) .

It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to combine the reference pricing of Cushing and the notification teachings of Huttenlocher for notifying an aggressive party when an opportunity for price improvement arose for the motivation of of creating a fair and efficient execution market which is less prone to manipulation. (col. 2, lines 20-40)

As per claim 23, Huttenlocher (0105) discloses minimum block requirements where a user can determine minimum order sizes to which his order can be displayed.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRUCE I. EBERSMAN whose telephone number is (571)270-3442. The examiner can normally be reached on 630am-5pm, Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on (571) 272-6771. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alexander Kalinowski/
Supervisory Patent Examiner, Art Unit 3691

Bruce I Ebersman
Examiner
Art Unit 3691
